

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TWO OLD HIPPIES, LLC,

Plaintiff,

vs.

No. CIV 10-0459 JB/RLP

CATCH THE BUS, LLC, GARY MACK
and FALLON MACK,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion to Compel Discovery Responses, filed January 25, 2011 (Doc. 33)("Motion"). The Court held a hearing on March 11, 2011. The primary issue is whether the Court should compel Defendant Catch the Bus, LLC, to answer and respond to Plaintiff Two Old Hippies, LLC's discovery, and award Two Old Hippies' attorneys' fees and costs related to this Motion. Because Catch the Bus has not responded to Two Old Hippies' Motion and thereby consented to the Motion, and because the Court concludes that Two Old Hippies' discovery is reasonably calculated to lead to relevant evidence, the Court grants the Motion.

PROCEDURAL HISTORY

On July 21, 2010, Two Old Hippies served the Defendants with discovery via the United States Postal Service. The parties began settlement discussions, and Two Old Hippies suspended the due date of Defendants' answers and responses while settlement discussions were pending. The parties reached a settlement agreement, but the Defendants did not meet the requirements of the agreement, so the settlement collapsed. After the collapse, Two Old Hippies notified the Defendants

on November 4, 2010 that their answers and responses would be due November 19, 2010. The Defendants have not answered or responded.

Two Old Hippiess moves the Court to compel Catch the Bus¹ to answer and respond to its discovery, for its attorneys' fees and costs related to this Motion, and for such other and further relief as proper. Two Old Hippiess has no working telephone number for the Catch the Bus. Two Old Hippiess attempted to notify the Defendants about this motion by electronic mail transmission and post on January 19, 2011 in an effort to confer, but the Defendants have not responded. Catch the Bus has not filed opposition briefs or otherwise responded to Two Old Hippiess' Motion.

At the hearing, no one appeared for the Catch the Bus.² The Court's Courtroom Deputy attempted to reach the Defendants on three telephone numbers it has for the Defendants. When the Courtroom Deputy attempted 575-491-6594, a child answered who did not seem to know who the parties the Court sought. When the Courtroom Deputy attempted 888-428-2892, it reached what appeared to be a facsimile transmission apparatus. When the Courtroom Deputy attempted 575-437-8081, she found the telephone number had been disconnected. Additionally, the Court's mail to Catch the Bus had been returned undeliverable. See Mail sent from the Court to Fallon Mack Returned as Undeliverable, filed February 23, 2011 (Doc. 44); Mail sent from the Court to Catch the Bus, LLC, Returned as Undeliverable, filed February 23, 2011 (Doc. 45); Mail sent from

¹ Two Old Hippiess moved to compel all the Defendants to respond to its discovery. The Court, however, dismissed Two Old Hippiess' claims against the individual Defendants on February 11, 2011. See Memorandum Opinion and Order, filed February 11, 2011 (Doc. 37).

² In the Court's Memorandum Opinion and Order, filed February 24, 2011 (Doc. 38), the Court stated that the Court would grant Plaintiff Two Old Hippiess, LLC's Motion to Strike Pleadings of and Enter Default Judgment Against Defendant Catch the Bus, LLC, filed November 2, 2010 (Doc. 27) if Catch the Bus, did not obtain new counsel within ten days of the order. Counsel has not appeared for Catch the Bus, and the Court entered Default Judgment Against Catch the Bus and struck its pleadings on March 11, 2011. See Doc 51.

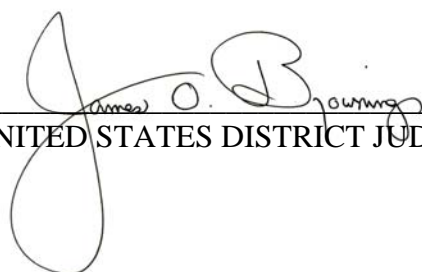
the Court to Gary Mack Returned as Undeliverable, filed February 23, 2011 (Doc. 46).

ANALYSIS

Two Old Hippiess served Catch the Bus with discovery. Catch the Bus has failed to respond to the discovery request. Catch the Bus has further failed to respond to Two Old Hippiess' Motion. "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b). The Court therefore grants the Motion.

The Court also reviewed Two Old Hippiess' discovery. It appears reasonable and to be expected in a case of this nature. From the face of the discovery, there does not appear to be a substantial reason, if any, Catch the Bus should not respond.

IT IS ORDERED that the Court grants the Plaintiff's Motion to Compel Discovery Responses, filed January 25, 2011 (Doc. 33). Defendant Catch the Bus, LLC, should respond to Plaintiff Two Old Hippiess, LLC's discovery within ten days of the entry of this order. Two Old Hippiess should submit an affidavit stating its attorney fees and costs for filing its motion and appearing at the March 11, 2011 hearing, and the Court will enter a separate order granting fees and costs for this motion.



UNITED STATES DISTRICT JUDGE

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